

**ASSEMBLY BILL**

**No. 1614**

**Introduced by Assembly Member Klehs**

February 22, 2005

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An act to amend Section 214 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as introduced, Klehs. Property tax: exemptions: nonprofit hospitals.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property.

Existing property tax law establishes a welfare exemption under which property is exempt from taxation if, among other things, that property is used exclusively for religious, hospital, scientific, or charitable purposes and is owned and operated by an entity, as provided, that is itself organized and operated for those purposes.

Existing law provides that a hospital is not deemed to be organized or operated for profit if, during the immediately preceding fiscal year, the operating revenues, as defined, are not in excess of the operating expenses of the hospital by an amount equal to 10% of the hospital's operating expenses.

This bill would, instead, provide that a hospital is deemed to be organized or operated for profit if, during the immediately preceding fiscal year, the operating revenues, as defined, are in excess of the operating expenses of the hospital by an amount equal to 10% or more of the hospital's operating expenses. This bill contains a declaration that this change constitutes a declaration of existing law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall ~~not~~ be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, ~~did not exceed~~ *exceed* operating expenses by an amount equivalent to 10 percent *or more* of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the

1 property, to conduct fundraising activities on the property and the  
2 proceeds derived from those activities are not unrelated business  
3 taxable income, as defined in Section 512 of the Internal  
4 Revenue Code, of the organization, are not subject to the tax on  
5 unrelated business taxable income that is imposed by Section 511  
6 of the Internal Revenue Code, and are used to further the exempt  
7 activity of the organization.

8 (B) For purposes of subparagraph (A):

9 (i) “Occasional use” means use of the property on an irregular  
10 or intermittent basis by the qualifying owner or any other  
11 qualifying organization described in clause (ii) of subparagraph  
12 (A) that is incidental to the primary activities of the owner or the  
13 other organization.

14 (ii) “Fundraising activities” means both activities involving  
15 the direct solicitation of money or other property and the  
16 anticipated exchange of goods or services for money between the  
17 soliciting organization and the organization or person solicited.

18 (C) Subparagraph (A) shall have no application in determining  
19 whether paragraph (3) has been satisfied unless the owner of the  
20 property and any other organization using the property as  
21 provided in subparagraph (A) have filed with the assessor a valid  
22 organizational clearance certificate issued pursuant to Section  
23 254.6.

24 (D) For the purposes of determining whether the property is  
25 used for the actual operation of the exempt activity, consideration  
26 shall not be given to the use of the property for meetings  
27 conducted by any other organization if the meetings are  
28 incidental to the other organization’s primary activities, are not  
29 fundraising meetings or activities as defined in subparagraph (B),  
30 are held no more than once per week, and the other organization  
31 and its use of the property meet all other requirements of  
32 paragraphs (1) to (5), inclusive. The owner of the other  
33 organization also shall file with the assessor a valid  
34 organizational clearance certificate issued pursuant to Section  
35 254.6.

36 (E) Nothing in subparagraph (A), (B), (C), or (D) shall be  
37 construed to either enlarge or restrict the exemption provided for  
38 in subdivision (b) of Section 4 and Section 5 of Article XIII of  
39 the California Constitution and this section.

1 (4) The property is not used or operated by the owner or by  
2 any other person so as to benefit any officer, trustee, director,  
3 shareholder, member, employee, contributor, or bondholder of  
4 the owner or operator, or any other person, through the  
5 distribution of profits, payment of excessive charges or  
6 compensations, or the more advantageous pursuit of their  
7 business or profession.

8 (5) The property is not used by the owner or members thereof  
9 for fraternal or lodge purposes, or for social club purposes except  
10 where that use is clearly incidental to a primary religious,  
11 hospital, scientific, or charitable purpose.

12 (6) The property is irrevocably dedicated to religious,  
13 charitable, scientific, or hospital purposes and upon the  
14 liquidation, dissolution, or abandonment of the owner will not  
15 inure to the benefit of any private person except a fund,  
16 foundation, or corporation organized and operated for religious,  
17 hospital, scientific, or charitable purposes.

18 (7) The property, if used exclusively for scientific purposes, is  
19 used by a foundation or institution that, in addition to complying  
20 with the foregoing requirements for the exemption of charitable  
21 organizations in general, has been chartered by the Congress of  
22 the United States (except that this requirement shall not apply  
23 when the scientific purposes are medical research), and whose  
24 objects are the encouragement or conduct of scientific  
25 investigation, research, and discovery for the benefit of the  
26 community at large.

27 The exemption provided for herein shall be known as the  
28 “welfare exemption.” This exemption shall be in addition to any  
29 other exemption now provided by law, and the existence of the  
30 exemption provision in paragraph (2) of subdivision (a) of  
31 Section 202 shall not preclude the exemption under this section  
32 for museum or library property. Except as provided in  
33 subdivision (e), this section shall not be construed to enlarge the  
34 college exemption.

35 (b) Property used exclusively for school purposes of less than  
36 collegiate grade and owned and operated by religious, hospital,  
37 or charitable funds, foundations, limited liability companies, or  
38 corporations, which property and funds, foundations, limited  
39 liability companies, or corporations meet all of the requirements  
40 of subdivision (a), shall be deemed to be within the exemption

1 provided for in subdivision (b) of Section 4 and Section 5 of  
2 Article XIII of the California Constitution and this section.

3 (c) Property used exclusively for nursery school purposes and  
4 owned and operated by religious, hospital, or charitable funds,  
5 foundations, limited liability companies, or corporations, which  
6 property and funds, foundations, limited liability companies, or  
7 corporations meet all the requirements of subdivision (a), shall be  
8 deemed to be within the exemption provided for in subdivision  
9 (b) of Section 4 and Section 5 of Article XIII of the California  
10 Constitution and this section.

11 (d) Property used exclusively for a noncommercial educational  
12 FM broadcast station or an educational television station, and  
13 owned and operated by religious, hospital, scientific, or  
14 charitable funds, foundations, limited liability companies, or  
15 corporations meeting all of the requirements of subdivision (a),  
16 shall be deemed to be within the exemption provided for in  
17 subdivision (b) of Section 4 and Section 5 of Article XIII of the  
18 California Constitution and this section.

19 (e) Property used exclusively for religious, charitable,  
20 scientific, or hospital purposes and owned and operated by  
21 religious, hospital, scientific, or charitable funds, foundations,  
22 limited liability companies, or corporations or educational  
23 institutions of collegiate grade, as defined in Section 203, which  
24 property and funds, foundations, limited liability companies,  
25 corporations, or educational institutions meet all of the  
26 requirements of subdivision (a), shall be deemed to be within the  
27 exemption provided for in subdivision (b) of Section 4 and  
28 Section 5 of Article XIII of the California Constitution and this  
29 section. As to educational institutions of collegiate grade, as  
30 defined in Section 203, the requirements of paragraph (6) of  
31 subdivision (a) shall be deemed to be met if both of the following  
32 are met:

33 (1) The property of the educational institution is irrevocably  
34 dedicated in its articles of incorporation to charitable and  
35 educational purposes, to religious and educational purposes, or to  
36 educational purposes.

37 (2) The articles of incorporation of the educational institution  
38 provide for distribution of its property upon its liquidation,  
39 dissolution, or abandonment to a fund, foundation, or corporation  
40 organized and operated for religious, hospital, scientific,

1 charitable, or educational purposes meeting the requirements for  
2 exemption provided by Section 203 or this section.

3 (f) Property used exclusively for housing and related facilities  
4 for elderly or handicapped families and financed by, including,  
5 but not limited to, the federal government pursuant to Section  
6 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended,  
7 Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v),  
8 Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or  
9 Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and  
10 owned and operated by religious, hospital, scientific, or  
11 charitable funds, foundations, or corporations meeting all of the  
12 requirements of this section shall be deemed to be within the  
13 exemption provided for in subdivision (b) of Section 4 and  
14 Section 5 of Article XIII of the California Constitution and this  
15 section.

16 The amendment of this paragraph made by Chapter 1102 of the  
17 Statutes of 1984 does not constitute a change in, but is  
18 declaratory of, the existing law. However, no refund of property  
19 taxes shall be required as a result of this amendment for any  
20 fiscal year prior to the fiscal year in which the amendment takes  
21 effect.

22 Property used exclusively for housing and related facilities for  
23 elderly or handicapped families at which supplemental care or  
24 services designed to meet the special needs of elderly or  
25 handicapped residents are not provided, or that is not financed by  
26 the federal government pursuant to Section 202 of Public Law  
27 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of  
28 Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of  
29 Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of  
30 Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled  
31 to exemption pursuant to this subdivision unless the property is  
32 used for housing and related facilities for low- and  
33 moderate-income elderly or handicapped families. Property that  
34 would otherwise be exempt pursuant to this subdivision, except  
35 that it includes some housing and related facilities for other than  
36 low- or moderate-income elderly or handicapped families, shall  
37 be entitled to a partial exemption. The partial exemption shall be  
38 equal to that percentage of the value of the property that is equal  
39 to the percentage that the number of low- and moderate-income

1 elderly and handicapped families occupying the property  
2 represents of the total number of families occupying the property.

3 As used in this subdivision, “low and moderate income” has  
4 the same meaning as the term “persons and families of low or  
5 moderate income” as defined by Section 50093 of the Health and  
6 Safety Code.

7 (g) (1) Property used exclusively for rental housing and  
8 related facilities and owned and operated by religious, hospital,  
9 scientific, or charitable funds, foundations, limited liability  
10 companies, or corporations, including limited partnerships in  
11 which the managing general partner or eligible limited liability  
12 company, is an eligible nonprofit corporation, meeting all of the  
13 requirements of this section, or by veterans’ organizations, as  
14 described in Section 215.1, meeting all the requirements of  
15 paragraphs (1) to (7), inclusive, of subdivision (a), shall be  
16 deemed to be within the exemption provided for in subdivision  
17 (b) of Section 4 and Section 5 of Article XIII of the California  
18 Constitution and this section and shall be entitled to a partial  
19 exemption equal to that percentage of the value of the property  
20 that the portion of the property serving lower income households  
21 represents of the total property in any year in which either of the  
22 following criteria applies:

23 (A) The acquisition, rehabilitation, development, or operation  
24 of the property, or any combination of these factors, is financed  
25 with tax-exempt mortgage revenue bonds or general obligation  
26 bonds, or is financed by local, state, or federal loans or grants and  
27 the rents of the occupants who are lower income households do  
28 not exceed those prescribed by deed restrictions or regulatory  
29 agreements pursuant to the terms of the financing or financial  
30 assistance.

31 (B) The owner of the property is eligible for and receives  
32 low-income housing tax credits pursuant to Section 42 of the  
33 Internal Revenue Code of 1986, as added by Public Law 99-514.

34 (C) In the case of a claim, other than a claim with respect to  
35 property owned by a limited partnership in which the managing  
36 general partner is an eligible nonprofit corporation, that is filed  
37 for the 2000–01 fiscal year or any fiscal year thereafter, 90  
38 percent or more of the occupants of the property are lower  
39 income households whose rent does not exceed the rent  
40 prescribed by Section 50053 of the Health and Safety Code. The

1 total exemption amount allowed under this subdivision to a  
2 taxpayer, with respect to a single property or multiple properties  
3 for any fiscal year on the sole basis of the application of this  
4 subparagraph, may not exceed twenty thousand dollars (\$20,000)  
5 of tax.

6 (2) In order to be eligible for the exemption provided by this  
7 subdivision, the owner of the property shall do both of the  
8 following:

9 (A) (i) For any claim filed for the 2000–01 fiscal year or any  
10 fiscal year thereafter, certify and ensure, subject to the limitation  
11 in clause (ii), that there is an enforceable and verifiable  
12 agreement with a public agency, a recorded deed restriction, or  
13 other legal document that restricts the project’s usage and that  
14 provides that the units designated for use by lower income  
15 households are continuously available to or occupied by lower  
16 income households at rents that do not exceed those prescribed  
17 by Section 50053 of the Health and Safety Code, or, to the extent  
18 that the terms of federal, state, or local financing or financial  
19 assistance conflicts with Section 50053, rents that do not exceed  
20 those prescribed by the terms of the financing or financial  
21 assistance.

22 (ii) In the case of a limited partnership in which the managing  
23 general partner is an eligible nonprofit corporation, the restriction  
24 and provision specified in clause (i) shall be contained in an  
25 enforceable and verifiable agreement with a public agency, or in  
26 a recorded deed restriction to which the limited partnership  
27 certifies.

28 (B) Certify that the funds that would have been necessary to  
29 pay property taxes are used to maintain the affordability of, or  
30 reduce rents otherwise necessary for, the units occupied by lower  
31 income households.

32 (3) As used in this subdivision, “lower income households”  
33 has the same meaning as the term “lower income households” as  
34 defined by Section 50079.5 of the Health and Safety Code.

35 (h) Property used exclusively for an emergency or temporary  
36 shelter and related facilities for homeless persons and families  
37 and owned and operated by religious, hospital, scientific, or  
38 charitable funds, foundations, limited liability companies, or  
39 corporations meeting all of the requirements of this section shall  
40 be deemed to be within the exemption provided for in



subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, “emergency or temporary shelter” means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, limited liability companies, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, “educational purposes” means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization’s shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

1     (l) The amendments made by the act adding this subdivision  
2 shall apply with respect to lien dates occurring on and after  
3 January 1, 2005.

4     SEC. 2. The amendment of Section 214 of the Revenue and  
5 Taxation Code made by this act does not constitute a change in,  
6 but is declaratory of, existing law.

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